

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

No. CIV 22-0830 JB/JFR

WILLIAM C. GARDNER, DDS,

Defendant.

ORDER¹

THIS MATTER comes before the Court on: (i) the Defendant's Permission to Appear Via Zoom, filed March 8, 2024 (Doc. 57) ("Zoom Appearance Motion"); (ii) the Defendant's Motion

¹This Order disposes of: (i) the Defendant's Permission to Appear Via Zoom, filed March 8, 2024 (Doc. 57); (ii) the Defendant's Motion for Contempt of Court of David Mittle of NMTRD Failed to Appear at Deposition, filed April 15, 2024 (Doc. 64); (iii) the Non-Party Michael Fricke's Motion to Quash and for Protective Order, filed April 15, 2024 (Doc. 67); (iv) the Non-Party Jason Snider's Motion to Quash Defendant's Deposition Subpoena Duces Tecum and for Protective Order, filed April 15, 2024 (Doc. 69); (v) the Defendant's Motion to Compel and Response to Quash Jason Snider of DDNM to Respond and Appear at Deuces [sic] Tecum Deposition and for Sanctions, filed April 22, 2024 (Doc. 71); (vi) the Non-Party Mark Glenn's Motion to Quash Defendant's Deposition Subpoena Duces Tecum and for Protective Order, filed May 1, 2024 (Doc. 76); (vii) the Non-Party Walgreen Co.'s Motion to Quash Subpoena, filed May 3, 2024 (Doc. 81); (viii) the Defendant's Motion to Compel Discovery of Albertsons Pharmacy, filed May 6, 2024 (Doc. 83); (ix) the Defendant's Motion to Compel Discovery of CVS Pharmacy, filed May 6, 2024 (Doc. 84); (x) the Defendant's Motion to Compel Discovery of Sam's Arnet [sic] Pharmacy Motion to Compel Discovery of CVS Pharmacy [sic], filed May 6, 2024 (Doc. 85); (xi) the Defendant's Motion to Compel Discovery of Walgreens Pharmacy, filed May 6, 2024 (Doc. 86); (xii) the Defendant's Motion to Compel Discovery of Walmart, filed May 6, 2024 (Doc. 87); (xiii) the Defendant's Failure to Respond and Appear at Deposition and Motion to Compel Lori Chavez to Respond and Appear at Deuces [sic] Tecum Deposition and for Sanctions, filed June 5, 2024 (Doc. 96); (xiv) the Defendant's Motion for Contempt of Court of Charles Shumacher of NM Dental Board Failed to Appear at Deposition, filed June 12, 2024 (Doc. 100); (xv) the Non-Party Walmart Pharmacy's Motion to Quash Subpoena and Response to Defendant's Motion to Compel Discovery of Walmart, filed June 13, 2024 (Doc. 103); (xvi) the Non-Party Michael Fricke's Second Motion for Protective Order, filed June 17, 2024 (Doc. 107); (xvii) Defendant's Opposed Motion to Extend Deadline for Expert Witness, filed June 28, 2024 (Doc. 117). The Court will issue at a later date, however, a Memorandum Opinion more fully detailing its rationale for this decision.

for Contempt of Court of David Mittle of NMTRD Failed to Appear at Deposition, filed April 15, 2024 (Doc. 64)(“Motion for Contempt of Mittle”); (iii) the Non-Party Michael Fricke’s Motion to Quash and for Protective Order, filed April 15, 2024 (Doc. 67)(“Frick Motion to Quash and for Protective Order”); (iv) the Non-Party Jason Snider’s Motion to Quash Defendant’s Deposition Subpoena Duces Tecum and for Protective Order, filed April 15, 2024 (Doc. 69)(“Snider Motion to Quash”); (v) the Defendant’s Motion to Compel and Response to Quash Jason Snider of DDNM to Respond and Appear at Deuces [sic] Tecum Deposition and for Sanctions, filed April 22, 2024 (Doc. 71)(“Motion to Compel Snider”); (vi) the Non-Party Mark Glenn’s Motion to Quash Defendant’s Deposition Subpoena Duces Tecum and for Protective Order, filed May 1, 2024 (Doc. 76)(“Glenn Motion to Quash”); (vii) the Non-Party Walgreen Co.’s Motion to Quash Subpoena, filed May 3, 2024 (Doc. 81)(“Walgreens Motion to Quash”); (viii) the Defendant’s Motion to Compel Discovery of Albertsons Pharmacy, filed May 6, 2024 (Doc. 83)(“Motion to Compel Albertsons”); (ix) the Defendant’s Motion to Compel Discovery of CVS Pharmacy, filed May 6, 2024 (Doc. 84)(“Motion to Compel CVS”); (x) the Defendant’s Motion to Compel Discovery of Sam’s Arnet [sic] Pharmacy Motion to Compel Discovery of CVS Pharmacy [sic], filed May 6, 2024 (Doc. 85)(“Motion to Compel Arnett Pharmacy”); (xi) the Defendant’s Motion to Compel Discovery of Walgreens Pharmacy, filed May 6, 2024 (Doc. 86)(“Motion to Compel Walgreens”); (xii) the Defendant’s Motion to Compel Discovery of Walmart, filed May 6, 2024 (Doc. 87)(“Motion to Compel Walmart”); (xiii) the Defendant’s Failure to Respond and Appear at Deposition and Motion to Compel Lori Chavez to Respond and Appear at Deuces [sic] Tecum Deposition and for Sanctions, filed June 5, 2024 (Doc. 96)(“Motion to Compel Chavez”); (xiv) the Defendant’s Motion for Contempt of Court of Charles Shumacher of NM Dental Board Failed to Appear at Deposition, filed June 12, 2024 (Doc. 100)(“Motion for Contempt of Schumacher”);

(xv) the Non-Party Walmart Pharmacy’s Motion to Quash Subpoena and Response to Defendant’s Motion to Compel Discovery of Walmart, filed June 13, 2024 (Doc. 103)(“Walmart Motion to Quash”); (xvi) the Non-Party Michael Fricke’s Second Motion for Protective Order, filed June 17, 2024 (Doc. 107)(“Second Frick Motion for Protective Order”); and (xvii) the Defendant’s Opposed Motion to Extend Deadline for Expert Witness, filed June 28, 2024 (Doc. 117)(“Motion to Extend Expert Deadline”). The Court held hearings on (i) March 26, 2024, see Clerk’s Minutes at 1, filed March 26, 2024 (Doc. 60); (ii) July 9, 2024, see Clerk’s Minutes at 1, filed July 9 2024 (Doc. 129); and (iii) September 24, 2024, see Clerk’s Minutes at 1, filed September 24, 2024 (Doc. 154). For the reasons stated on the record at the three hearings, the Court: (i) grants² the Zoom Appearance Motion, see Draft Transcript of Hearing at 2:14-15 (taken March 26, 2024)(Court)(“March 26, 2024, Tr.”);³ (ii) denies the Motion for Contempt of Mittle, see Draft Transcript of Hearing at 6:22-7:13 (taken July 9, 2024)(Court)(“July 9, 2024, Tr.”); (iii) grants in part and denies in part the Fricke Motion to Quash and for Protective Order, see July 9, 2024, Tr. at 29:8-30:18 (Court); (iv) grants in part and denies in part the Snider Motion to Quash, see July 9, 2024, Tr. at 41:19-42:18 (Court); (v) denies the Motion to Compel Snider, see July 9, 2024, Tr. at 45:15-46:3 (Court); (vi) grants the Glenn Motion to Quash, see July 9, 2024, Tr. at 52:20-53:2 (Court); (vii) denies without prejudice⁴ the Walgreens Motion to Quash, see July 9, 2024, Tr. at 64:19-25 (Court); (viii) denies without

²Although the Court did not address explicitly the Zoom Appearance Motion at the March 26, 2024, hearing, the Court allowed Defendant William Gardner to appear at the hearing via Zoom. See March 26, 2024, Tr. at 1:23 (Gardner); id. at 2:14-15 (Court). Accordingly, the Court grants the Zoom Appearance Motion.

³The Court’s citations to the transcript of the hearing refer to the court reporter’s original, unedited version. Any final transcript may contain slightly different page and/or line numbers.

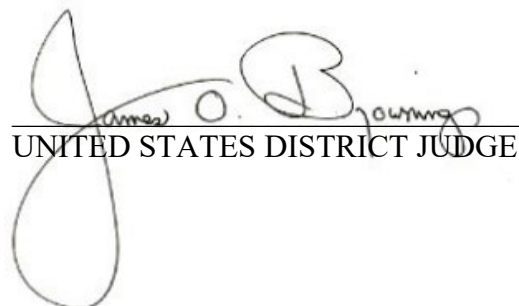
⁴The Court notes that Walgreens has complied with the Court’s oral ruling on the Walgreens Motion to Quash. See Notice of Compliance by Walgreen Co. at 1, filed October 16, 2024 (Doc. 156).

prejudice the Motion to Compel Albertsons, see July 9, 2024, Tr. at 77:25-78:6 (Court); (ix) denies without prejudice the Motion to Compel CVS, see July 9, 2024, Tr. at 77:25-78:6 (Court); (x) denies without prejudice the Motion to Compel Arnett Pharmacy, see July 9, 2024, Tr. at 77:25-78:6 (Court); (xi) denies without prejudice the Motion to Compel Walgreens, see July 9, 2024, Tr. at 85:18-22 (Court); (xii) denies without prejudice the Motion to Compel Walmart, see July 9, 2024, Tr. at 83:18-25 (Court); (xiii) grants in part and denies in part the Motion to Compel Chavez, see July 9, 2024, Tr. at 97:11-98:2 (Court); (xiv) denies the Motion for Contempt of Shumacher, see July 9, 2024, Tr. at 104:22-105:16 (Court); (xv) grants in part and denies in part the Walmart Motion to Quash, see July 9, 2024, Tr. at 84:18-21 (Court); id. at 108:21-109:3 (Court, Cassavant); (xvi) grants the Second Frick Motion for Protective Order, see July 9, 2024, Tr. at 29:8-30:8 (Court); and (xvii) denies the Motion to Extend Expert Deadline, see July 9, 2024, Tr. at 117:9-25 (Court).

IT IS ORDERED that: (i) the Defendant's Permission to Appear Via Zoom, filed March 8, 2024 (Doc. 57), is granted; (ii) the Defendant's Motion for Contempt of Court of David Mittle of NMTRD Failed to Appear at Deposition, filed April 15, 2024 (Doc. 64), is denied; (iii) the Non-Party Michael Fricke's Motion to Quash and for Protective Order, filed April 15, 2024 (Doc. 67), is granted in part and denied in part; (iv) the Non-Party Jason Snider's Motion to Quash Defendant's Deposition Subpoena Duces Tecum and for Protective Order, filed April 15, 2024 (Doc. 69)("Snider Motion to Quash"), is granted in part and denied in part; (v) the Defendant's Motion to Compel and Response to Quash Jason Snider of DDNM to Respond and Appear at Deuces [sic] Tecum Deposition and for Sanctions, filed April 22, 2024 (Doc. 71), is denied; (vi) the Non-Party Mark Glenn's Motion to Quash Defendant's Deposition Subpoena Duces Tecum and for Protective Order, filed May 1, 2024 (Doc. 76)("Glenn Motion to Quash"), is

granted; (vii) the Non-Party Walgreen Co.'s Motion to Quash Subpoena, filed May 3, 2024 (Doc. 81), is denied without prejudice; (viii) the Defendant's Motion to Compel Discovery of Albertsons Pharmacy, filed May 6, 2024 (Doc. 83), is denied without prejudice; (ix) the Defendant's Motion to Compel Discovery of CVS Pharmacy, filed May 6, 2024 (Doc. 84), is denied without prejudice; (x) the Defendant's Motion to Compel Discovery of Sam's Arnet [sic] Pharmacy Motion to Compel Discovery of CVS Pharmacy [sic], filed May 6, 2024 (Doc. 85), is denied without prejudice; (xi) the Defendant's Motion to Compel Discovery of Walgreens Pharmacy, filed May 6, 2024 (Doc. 86), is denied without prejudice; (xii) the Defendant's Motion to Compel Discovery of Walmart, filed May 6, 2024 (Doc. 87), is denied without prejudice; (xiii) the Defendant's Failure to Respond and Appear at Deposition and Motion to Compel Lori Chavez to Respond and Appear at Deuces [sic] Tecum Deposition and for Sanctions, filed June 5, 2024 (Doc. 96)("Motion to Compel Chavez"), is granted in part and denied in part; (xiv) the Defendant's Motion for Contempt of Court of Charles Shumacher of NM Dental Board Failed to Appear at Deposition, filed June 12, 2024 (Doc. 100)("Motion for Contempt of Shumacher"), is denied; (xv) the Non-Party Walmart Pharmacy's Motion to Quash Subpoena and Response to Defendant's Motion to Compel Discovery of Walmart, filed June 13, 2024 (Doc. 103), is granted in part and denied in part; (xvi) the Non-Party Michael Fricke's Second Motion for Protective Order, filed June 17, 2024 (Doc. 107), is granted; (xvii) Defendant's Opposed Motion to Extend Deadline for Expert Witness, filed June 28, 2024 (Doc. 117), is denied; (xviii) the parties must conduct discovery in accordance with the Court's instructions at the March, 26, 2024, hearing, the July 9, 2024, hearing, and the September 24, 2024 hearing; (xix) the Defendant must pay fifty percent of the attorney's fees incurred in preparing and arguing the Snider Motion to Quash, the Motion to Compel Chavez, and the Motion for Contempt of Shumacher; and (xx) the Defendant

must pay the attorney's fees incurred in preparing the Glenn Motion to Quash.



UNITED STATES DISTRICT JUDGE

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